

No. 11088

United States
Circuit Court of Appeals
For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

THE BANK OF CALIFORNIA, National Association,
Executor of the Estate of Margaret
Eyre Girvin, Deceased,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

OCT 30 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

ALLEN G. WRIGHT, Esq.,
E. H. JULIEN, Esq.

For Commissioner:

EUGENE HARPOLE, Esq.

Docket No. 2396

THE BANK OF CALIFORNIA, National Association, Executor of the Last Will and Testament of Margaret Eyre Girvin, Deceased,

Amended Title: ESTATE OF MARGARET EYRE GIRVIN, Deceased, The Bank of California, N. A., Executor, (See Order 8/3/43),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

(Transferred to Judge Oppen 11/21/44)

DOCKET ENTRIES

1943

- Jul. 14—Petition received and filed. Taxpayer notified. Fee paid.
- Jul. 16—Copy of petition served on General Counsel.
- Jul. 14—Request for Circuit hearing in San Francisco, filed by taxpayer. 7/16/43 Granted.
- Aug. 2—Motion to amend caption filed by taxpayer.

1943

Aug. 3—Order amending caption to read, Estate of Margaret Eyre Girvin, dec'd., The Bank of California, N. A., Executor, entered.

Aug. 9—Answer filed by General Counsel.

Aug. 12—Copy of answer served on taxpayer. San Francisco, California.

1944

Aug. 10—Hearing set September 18, 1944—San Francisco, California.

Sep. 18—Hearing had before Judge Van Fossan on merits. Stipulation of facts and appearance of Edward Hale Julien filed at hearing. Briefs due 10/18/44. Replies due 11/3/44.

Oct. 14—Transcript of hearing 9/18/44 filed.

Oct. 16—Brief filed by General Counsel.

Oct. 18—Brief filed by taxpayer. 10/18/44 Copy served.

Oct. 31—Reply brief filed by taxpayer. 11/1/44 Copy served.

Nov. 2—Reply brief filed by General Counsel. Served 11/3/44.

Dec. 7—Memorandum opinion rendered. Judge Oppen. Decision will be entered for the petitioner. Copies served 12/8/44.

Dec. 7—Decision entered. Judge Oppen. Div. 4.

1945

Mar. 1—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

1945

Mar. 19—Proof of service filed. (Allen G. Wright and Ed. Hale Julien).

Mar. 19—Proof of service filed. (The Bank of California N. A. Executor, et al.)

Mar. 29—Certified copy of order from 9th Circuit extending time to 7/10/45 to prepare and transmit record filed.

Jun. 15—Statement of points to be relied upon filed by General Counsel with proof of service thereon.

Jun. 15—Designation of record, proceedings and evidence to be contained in record filed by General Counsel with proof of service thereon. [1*]

The Tax Court of the United States
Docket No. 2396

THE BANK OF CALIFORNIA, National Association, Executor of the Last Will and Testament of Margaret Eyre Girvin, Deceased,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the

*Page numbering appearing at top of page of original certified Transcript of Record.

Commissioner in his notice of deficiency (Bureau Symbols MT-ET-10935—First California) dated June 23, 1943, and as a basis for its proceeding alleges as follows:

1. The Petitioner is a national association organized, created and existing under and by virtue of the laws of the United States of America, and the duly appointed, qualified and acting executor of the Last Will and Testament of Margaret Eyre Girvin, deceased, whose address is at 400 California Street, San Francisco (20) California.

2. The notice of deficiency (a copy of which is hereto attached and marked "Exhibit A") was mailed to the Petitioner on June 23, 1943. [2]

3. The taxes in controversy are estate taxes for the calendar year 1941 (the decedent dying January 16, 1941). The deficiency asserted is \$14,344.29. The amount in controversy is the whole of said asserted deficiency of \$14,344.29. The estate tax return was filed in the First California Collection District.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(1) In determining the asserted value of the net estate of the decedent for the basic tax imposed by the applicable revenue acts, the respondent erroneously included in the gross estate of the decedent, the asserted value of an absolute and irrevocable transfer in trust made by the decedent without any reservations, under date of June 26, 1924, and not made by her in contemplation of death, which is

referred to in the statement accompanying said notice of deficiency set forth in said "Exhibit A" as the "trust established September 14, 1925" and did so without authority of law.

(2) In determining the asserted value of the net estate of the decedent for the additional tax imposed by the applicable revenue acts, the respondent erroneously included in the gross estate of the decedent, the asserted value of the aforesaid transfer in trust, and did so without authority of law.

(3) In determining the proposed deficiency, the respondent erroneously failed to exclude from the gross estate of the decedent, the property conveyed by the aforesaid transfer in trust, and the asserted or any other value thereof, as required and provided by law, and

(4) The respondent erred in determining a deficiency herein in the sum of \$14,344.29, or any other sum or at all, when the facts of the case disclose no deficiency at all.

5. The facts upon which the Petitioner relies as sustaining the foregoing assignments of error are those which follow:

(1) Richard Donald Girvin, the husband of said Margaret Eyre Girvin, died April 5, 1924, leaving a Last Will which was duly admitted to probate by order duly given and made by the Superior Court of the State of California in and for the City and County of San Francisco on June 25, 1924.

(2) The estate of said Richard Donald Girvin, deceased, consisted of his separate property and an undivided one-half interest in and to the commu-

nity property of himself and said Margaret Eyre Girvin, his wife.

(3) In and by said Will, said Richard Donald Girvin, after making certain specific bequests, devised and bequeathed all the rest and residue of his estate (over which he had power of testamentary disposition) to The Bank of California National Association of San Francisco in trust, among other matters to collect and receive the income therefrom and to pay the net income therefrom to said Margaret Eyre Girvin, his wife, during her [4] lifetime, and after her death to divide the trust fund between their two children, a son and a daughter, in certain proportions, or their issue, and in default of any issue of the son or daughter who might fail to survive the wife, the trust fund was to go to the surviving son or daughter, as the case might be, or to their issue. A copy of the Last Will of said Richard Donald Girvin, deceased, is attached hereto, marked "Exhibit B", and is hereby referred to, incorporated in, and made a part hereof.

(4) At the time said Will of said Richard Donald Girvin was made and at the time of his death, he had the power of testamentary disposition over his separate property and one-half of the community property of himself and his said wife.

(5) Following the death of said Richard Donald Girvin, the said Margaret Eyre Girvin did by her deed of trust made under date of June 26, 1924, grant, bargain, sell and convey to The Bank of California National Association aforesaid as trustee, all her community property or interest in or

to the estate of said Richard Donald Girvin herein, deceased, which went to, belonged to or might belong to her as the surviving spouse of said deceased, to have and to hold in trust, however, for the same uses and purposes as those declared and set forth in said Will of said deceased, and for the term therein stated, all as more fully stated in said deed of trust, a full, true and [5] correct copy of which is attached hereto, marked "Exhibit C", and is hereby referred to, incorporated in, and made a part hereof. The aforesaid trust was accepted by said The Bank of California National Association in writing duly executed by it on the 26th day of June 1924. The administration of the estate of said Richard Donald Girvin, deceased, was later brought to a close by the said Superior Court by its "decree settling final account and of final distribution" duly made and entered therein on the 14th day of September 1925, in which said Court referred to said deed and directed distribution to be made in accordance with the terms of said Will and said deed.

(6) The transfer in trust effected by the said deed of trust and recognized by the said decree of said Court was an absolute, irrevocable transfer of property in or to which said Margaret Eyre Girvin reserved no estate, right, title or interest.

(7) The said transfer in trust was made by said Margaret Eyre Girvin to escape the responsibility of management of the property so transferred and was not made in contemplation of death.

(8) The said Margaret Eyre Girvin died, testate, in the City and County of San Francisco, State of California, on the 16th day of January 1941, and she left surviving her, Richard Girvin, her son, and Lee Girvin Tevis, her daughter; and [6]

(9) The Federal estate tax return of the estate of said Margaret Eyre Girvin, deceased, was filed by the Petitioner herein with the Collector of Internal Revenue at San Francisco, California, on or about the 24th day of September 1941, and it disclosed an estate tax of \$2,022.35 which was paid in full by your Petitioner to said Collector on or about the 7th day of April, 1942.

6. Wherefore the Petitioner Prays that this Tax Court may hear the proceeding and determine that there is no deficiency or deficiency tax due or owing from the Petitioner or from the estate of said decedent, Margaret Eyre Girvin.

Dated: San Francisco, California, July 7, 1943.

ALLEN G. WRIGHT,

Counsel for Petitioner [7]

State of California,
City and County of San Francisco—ss.

N. D. Platt, being first duly sworn, deposes and says: that he is the duly appointed, qualified and acting assistant trust officer of the above named, The Bank of California National Association of San Francisco, California; that he makes this affidavit for and on behalf of said national association; that he has been duly authorized by it to so

make this affidavit; that The Bank of California National Association aforesaid, is now and ever since the 5th day of February 1941 has been the duly appointed, qualified and acting executor of the Last Will and Testament of Margaret Eyre Girvin, deceased, mentioned in the foregoing petition; that your deponent has read the foregoing petition and knows the contents thereof and is familiar with the statements contained therein; and that the facts stated therein are true of his own knowledge except as to those facts stated to be on information or belief, and those facts so stated, he believes to be true.

N. D. PLATT

Subscribed and sworn to before me this 8th day of July 1943.

(Seal)

EDITH VIA

Notary Public in and for the City and County of San Francisco, State of California. [8]

EXHIBIT "A"

Form 1236

Office of

Internal Revenue Agent in Charge

San Francisco Division

IRA:ET:90-D:CSW

(C:TS:PD SF:WGW:90-D)

Treasury Department

Internal Revenue Service

74 New Montgomery Street

San Francisco, 5, California

June 23, 1943

Estate of Margaret Eyre Girvin, Deceased,

Bank of California, N. A., Executor,

400 California Street,

San Francisco, California

MT-ET-10935—First California

Estate of Margaret Eyre Girvin

Date of Death: January 16, 1941

Sirs:

You are advised that the determination of the estate-tax liability of the above-named estate, discloses a deficiency of \$14,344.29, as shown in the statement attached.

In accordance with the provisions of existing internal-revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may

file a petition with The Tax Court of the United States for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, 5, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By F. M. HARLESS,

Internal Revenue Agent in
Charge

Enclosures:

Statement

Form or waiver [9]

ESTATE TAX

San Francisco

IRA:ET:90-D:CXW

(C:TS:PD SF:WGW:90-D)

MT-ET-10935—First California

Estate of Margaret Eyre Girvin

Date of Death: January 16, 1941

Statement

	Liability	Assessed	Deficiency
Estate Tax	\$16,366.64	\$2,022.35	\$14,344.29

In making this determination of the Federal estate tax liability of the above-named estate, careful consideration has been given to the protest dated March 23, 1942, and to the statements made at conferences held on April 24 and May 11, 1942, and on June 25 and August 5, 1942.

A copy of this letter and statement has been mailed to your representative, Mr. Allen G. Wright, care of Wright & Wright & Larson, 1010 Mills Building, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Estate

Net estate for basic tax as disclosed by return.....	\$	0.00
Net estate for additional tax as disclosed by return....	\$	37,981.30
Additions to value of net estate and decreases in deductions:		
(a) Transfers during decedent's life,		
Schedule G of return	\$97,854.81	
Decreases in deductions	0.00	97,854.81
Total.....	\$	135,836.11
Reductions in value of net estate and increases in deductions:		0.00
Net estate for additional tax as adjusted.....	\$	135,836.11
Net estate for basic tax as adjusted.....	\$	75,836.11

Explanation of Adjustments

(a) Transfers during decedent's life,			
Schedule G of return:		Returned	Determined
Item 1—Decedent's trust established			
September 14, 1925	\$	0.00	\$97,854.81

Effective September 14, 1925, Margaret Eyre Girvin transferred to Bank of California, N. A., in trust all her community property or interest in the community estate of herself and her deceased husband, Richard Donald Girvin. Richard Donald Girvin died on April 5, 1924. That part of the property over which the latter had power of testamentary disposition, and remaining after administration and payment of specific bequests, was distributed on September 14, 1925 to the above-named Bank of California, N.A., in trust, pursuant to decree of the probate court and his will. The trust created by Richard Donald Girvin provided that the income was to be paid to Margaret Eyre Girvin during her lifetime, and after her death the trust fund to be divided between their two children, namely, a son and a daughter, pursuant to the terms specified in the will, and if either child die in the lifetime of said Margaret Eyre Girvin, leaving issue at her death, such issue shall take the share which his or their parent would have taken, and if either son or daughter of Richard Donald Girvin die in the lifetime of Margaret Eyre Girvin without issue, then on the death of Margaret Eyre Girvin, the surviving child shall take the whole of the trust fund. The deed of trust made by Margaret Eyre Girvin provided that it was made upon the same uses and purposes as those declared and set forth in the will of Richard Donald Girvin, and the terms stated therein. The combined fund created by the above-mentioned transfers had a value amounting to \$195,709.62 at the time of Margaret Eyre Girvin's

death on January 16, 1941. It is held that she contributed one-half to the fund upon its creation in 1925, and, therefore, one-half of said \$195,709.62, or \$97,854.81, is includible in her estate. See Section 811 of the Internal Revenue Code.

Computation of Estate Tax

	Returned	Determined
Gross estate	\$ 88,659.18	\$186,513.99
Deductions for basic tax..	110,677.88	110,677.88
Net estate for basic tax....	\$ 0.00	\$ 75,836.11
Net estate for additional tax	\$ 37,981.30	\$135,836.11
Gross basic tax	\$	1,016.72
Credit for State inheritance, etc., taxes		813.38
Net basic tax		\$ 203.34
Total gross taxes (basic and additional)	\$	15,692.14
Gross basic tax		1,016.72
Net additional tax		\$ 14,675.42
Total net basic and additional taxes.....		\$ 14,878.76
Defense tax (10%)		1,487.88
Total tax payable		\$ 16,366.64
Estate tax assessed:		
Amount shown on return, assessed on Original, List September 1941 (S), page 100, line 5.....		2,022.35
Deficiency		\$ 14,344.29

[Endorsed]: T.C.U.S. Filed July 14, 1943.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition.
4. (1) to (4), inclusive. Denies that the determination of tax set forth in the notice of deficiency is based upon errors as alleged in subparagraphs (1) to (4), inclusive, of paragraph 4 of the petition. [13]
5. (1) Admits the allegations contained in subparagraph (1) of paragraph 5 of the petition.
(2) Admits the allegations contained in subparagraph (2) of paragraph 5 of the petition.
(3) Admits the allegations contained in subparagraph (3) of paragraph 5 of the petition.
(4) Admits the allegations contained in subparagraph (4) of paragraph 5 of the petition.
(5) Admits the allegations contained in subparagraph (5) of paragraph 5 of the petition.
(6) Denies the allegations contained in subparagraph (6) of paragraph 5 of the petition.

(7) For lack of information denies the allegations contained in subparagraph (7) of paragraph 5 of the petition.

(8) Admits the allegations contained in subparagraph (8) of paragraph 5 of the petition.

(9) Admits the allegations contained in subparagraph (9) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

(Signed)

J. P. WENCHEL TMM

Chief Counsel, Bureau of
Internal Revenue

Of Counsel:

B. H. NEBLETT,

Acting Division Counsel

T. M. MATHER,

Special Attorney, Bureau of
Internal Revenue [14]

[Endorsed]: T.C.U.S. Filed Aug. 9, 1943.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the following facts shall be taken to

be true in the above-entitled proceeding and received as evidence therein, together with all exhibits attached to this stipulation and made a part hereof; subject to the right of either party to offer further and additional evidence not inconsistent with or contrary to the matter herein stipulated;

I. The petitioner, Estate of Margaret Eyre Girvin, The Bank of California, National Association, Executor, is the estate of a deceased person, with its address and principal place of business at San Francisco, California.

II. Margaret Eyre Girvin was born October 7, 1862, and died testate on January 16, 1941, a resident of the State of California and County of San Francisco. [15]

III. The value of the gross estate of Margaret Eyre Girvin, as reported upon the estate tax return filed, was \$88,659.18.

IV. Undisputed deductions from the reported estate, exclusive of the specific exemption, amount to \$10,677.88.

V. By an indenture or deed of trust made on the 26th day of June, 1924, by and between said Margaret Eyre Girvin, as donor, and The Bank of California, National Association, as trustee, a full and correct copy of which is attached hereto, made a part hereof, and marked Exhibit 1, said Margaret Eyre Girvin transferred in trust as specified in said Exhibit 1, property which on January 16, 1941, the date of her death, had a fair market value of \$97,854.81. No part of said property or of the value thereof was included in the gross estate reported

upon the federal estate tax return filed for the Estate of Margaret Eyre Girvin, deceased. The Commissioner of Internal Revenue has determined that said amount should be added to the reported gross estate in determining the federal estate tax due from said Estate of Margaret Eyre Girvin, Deceased.

VI. Richard Donald Girvin, husband of Margaret Eyre Girvin, pre-deceased her, having died testate on April 5, 1924. His will was admitted to probate by order of the Superior Court of the State of California in and for the City and County of San Francisco, on June 25, 1924. A full, true and correct copy of the last will and testament of said Richard Donald Girvin is attached hereto, made a part hereof, and marked Exhibit 2. [16]

VII. A decree of final distribution of the estate of Richard Donald Girvin was duly made, entered and filed in said probate proceeding on the 14th day of September, 1925. No appeal therefrom has ever been taken and said decree is now final.

VIII. The estate of Richard Donald Girvin consisted of his separate property and an undivided one-half interest in and to the community property of himself and Margaret Eyre Girvin, his wife.

IX. Following the death of Richard Donald Girvin, her husband, Margaret Eyre Girvin, the widow, did, by said indenture or deed of trust dated June 26, 1924, Exhibit 1 to this stipulation, dispose of her entire undivided community interest in the community property of herself and said Richard Donald Girvin upon the same uses, terms, condi-

tions and limitations declared and set forth in the will of Richard Donald Girvin, deceased.

X. Richard Girvin and Lee Girvin Tevis, son and daughter, respectively, of the decedents Richard Donald Girvin and Margaret Eyre Girvin, survived both of said parents.

ALLEN G. WRIGHT

EDWARD HALE JULIEN

Counsel for Petitioner

J. P. WENCHEL TMM

Chief Counsel, Bureau of Internal Revenue,

Counsel for Respondent.

Of Counsel:

B. H. NEBLETT,

Division Counsel

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue [17]

“EXHIBIT No. 1”

This Indenture or Deed of Trust, made this 26th day of June, 1924, by and between Margaret Eyre Girvin, a widow, of the City and County of San Francisco, State of California, the party of the first part herein, and The Bank of California National Association, a national banking association duly organized, created and existing under and by virtue of the laws of the United States of America, having its principal place of business in said City and County of San Francisco, and duly authorized and quali-

fied to conduct the business of a trust company in said State of California, party of the second part herein.

Witnesseth, That

Whereas, Richard Donald Girvin, the husband of said party of the first part, died in said City and County on the 5th day of April, 1924, leaving a Last Will and Testament bearing the date of August 31st, 1922, which, in the course of proceedings for the probate whereof, was admitted to probate by an order duly made and entered on the 25th day of June, 1924, in the matter of the estate of said Richard Donald Girvin, deceased, in and by the Superior Court of the State of California, in and for said City and County, and

Whereas, in and by said Last Will and Testament, after making certain specific bequests to his widow a brother, and two children, the testator, the said Richard Donald Girvin, gave, devised, bequeathed and appointed all his real and personal estate not by said Will or by any Codicil thereto otherwise specifically disposed of and which (as said testator expressed himself in said [18] Will) he could dispose of by will in any manner he thought proper unto his Trustee, to wit; the said party of the second part in trust, for the uses and purposes named and set forth in said will, and

Whereas, the said testator died leaving an estate consisting of real and personal property, the whole of which was at the time of his decease the community property of said testator and said party of the first part, and

Whereas, after paying the debts of said testator, the family allowance, and the charges and expenses of administration of the estate of said deceased, Richard Donald Girvin, one-half of said community property would go or belong to said party of the first part, and the other half of said community property (less the specific bequests above referred to) would be distributed to said party of the second part as trustee in trust for the uses and purposes set forth and declared in said Will, and

Whereas, said party of the first part wishes all the community property of said estate to fall into the trust created in and by said will except such as may be required to carry out the other provisions of said Will;

Now, Therefore, in consideration of the premises aforesaid and of One Dollar lawful money of the United States of America to her in hand paid by said party of the second part, receipt whereof is hereby acknowledged, said party of the first part has granted, bargained, sold and conveyed and does hereby grant, bargain, sell and convey unto said party of the second part, its successors and assigns as trustees, all the community property or [19] interest of said party of the first part in or to the estate of said Richard Donald Girvin, deceased, which went to, belongs to, or may belong to her, as the surviving spouse of said deceased, to have and to hold in trust, however, for the same uses and purposes of those declared and set forth in said will of said deceased, and for the term therein stated, and as fully and effectually as though said community property or inter-

est of said party of the first, otherwise going to or belonging to her, was and could be devised and bequeathed unto said party of the second part in trust as aforesaid in and by said will, to which a reference is hereby made for further particulars.

In Witness Whereof said party of the first part, on the day and year herein first above written has hereunto and to a duplicate hereof set her hand and seal.

[Seal]

MARGARET EYRE GIRVIN

The Bank of California National Association, a national banking association, the trustee and party of the second part in the foregoing indenture, in consideration of the premises and of the execution of said Indenture, does hereby accept the trusts imposed on it and set forth and declared in said Indenture, and agrees to observe and perform the same, fully and faithfully.

In witness whereof said party of the second part on the day and year in the said Indenture first written has hereunto and to a duplicate hereof caused its corporate name and seal to be affixed by its Vice President thereunto duly authroized.

THE BANK OF CALIFORNIA
NATIONAL ASSOCIATION

By C. K. McINTOSH,
Vice-President [20]

“EXHIBIT No. 2”

I, Richard Donald Girvin, formerly of Menlo Park, County of San Mateo, State of California, United

States of America and now temporarily residing at 21 St. John's Road, Putney Hill in the County of Surrey, England, hereby revoke all former Wills and testamentary dispositions made by me and declare this to be my last will and testament.

1. I appoint The Bank of California, National Association of San Francisco, California, United States of America (hereinafter call "my Trustee") to be the Executors and Trustees of this, my will.

2. I bequeath to my wife, Margaret Eyre Girvin, absolutely (free of duty) all the furniture, jewelry plate, plated articles, china, glass, books, pictures and other articles of household or personal use or ornament of which I may be possessed at my death.

3. I bequeath (free of duty) to my brother Harold Girvin or should he die before me, then to his wife, Maude Girvin, the sum of Two Thousand dollars United States currency to my son Richard Girvin the sum of Five hundred dollars United States currency and to my daughter Lee Girvin Tevis the sum of Five hundred dollars United States currency.

4. I give, devise, bequeath and appoint all my real and personal estate not hereby or by any codicil hereto otherwise specifically disposed of and which I can dispose of by will in any manner I think proper onto my trustee upon trust to sell, call in and convert into money such part thereof as does not consist of [21] money with power to postpone such sale and conversion for such period as my trustees without being liable to account may think proper and out of the proceeds of such sale and conversion and out of my

ready money to pay my funeral and testamentary expenses and just debts.

5. My Trustees shall invest the residue of the said moneys in their name in or upon any duly authorized securities or any securities of a similar nature to any which may be held at my death with power at discretion to change any such investments and shall stand possessed of such investments (including any part of my residuary estate remaining unconverted) hereinafter called the Trust fund and of the annual income thereof upon the trusts following:

6. Upon trust to pay the said income to my wife during her life and after her death to divide the said Trust fund between my said son Richard Girvin and my said daughter Lee Girvin Tevis in such shares and proportions that my said son shall receive and be paid one moiety or equal half part of the said Trust fund less Seven thousand five hundred dollars United States currency and that my said daughter shall receive one moiety or equal half part of the said Trust fund and in addition the Seven thousand five hundred dollars United States currency deducted from my said son's moiety or equal half part of the said Trust fund. Provided that should either of them die in the lifetime of my said wife, leaving issue at her death such issue shall take the share which their parent would have taken and if more than one in equal shares. Provided further that should either of my said [22] children die in the lifetime of my said wife without issue then I direct that on the death of my said wife, the survivor shall take the whole of the said Trust fund absolutely.

7. And I direct that my Trustees shall be entitled to make and be paid all usual and proper charges in and about the conduct of the trust business.

In witness whereof I have hereunto set my hand and seal this thirty-first day of August in the year of our Lord One thousand nine hundred and twenty-two at 198 Upper Richmond Road Putney in the County of Surrey England.

[Seal] R. D. GIRVIN

The foregoing instrument was this thirty-first day of August One thousand nine hundred and twenty-two. Signed, sealed, published and declared by the said Richard Donald Girvin to be his last Will and Testament in the presence of each of us the undersigned who thereupon at his request in his presence and in the presence of each other have hereunto subscribed our names as attesting witnesses thereof the day and year last above written.

FRANK GALE,

Solicitor.

198 Upper Richmond Road,

Putney S. W. 15

EDMOND J. VINCE,

His Clerk.

[Endorsed]: T. C. U. S. Filed Sept. 18, 1944. [23]

Excerpts from the Testimony of the Proceedings
Before the Tax Court of the United States in
the Case of Margaret Eyre Girvin, Deceased,
The Bank of California, N. A., Executor. Docket
No. 2396. San Francisco, California, September
18, 1944.

RICHARD GIRVIN,
called as a witness for and on behalf of the Petitioner,
having been first duly sworn, was examined and
testified as follows:

Direct Examination

The Clerk: Please state your full name.

The Witness: Richard Girvin—G-i-r-v-i-n.

By Mr. Julien:

Q. Mr. Girvin, are you the son of Richard Donald Girvin? A. Yes.

Q. And your mother was Margaret Eyre Girvin? A. Yes.

Q. It has been stipulated, Mr. Girvin, that your father died April 5, 1924. On that date how many children did you have?

A. Three.

Q. Are those children living now?

A. Yes.

Q. How many children did your sister, Lee Girvin Tevis have? A. Two.

Q. Are they living now? A. Yes. [24]

Q. Have you any grandchildren, Mr. Girvin?

A. One.

Q. Do you know whether your sister has any grandchildren? A. No.

Mr. Julien: That is all. You may cross examine.

Cross Examination

By Mr. Harpole:

Q. How many children do you have living at this time? A. Do I have?

Q. Yes. A. Three.

Q. And your sister has two? A. Two.

[Endorsed]: T. C. U.S. Filed Oct. 14, 1944. [25]

PETITIONER'S EXHIBIT No. 1

Schedule G

Transfers During Decedent's Life

(See Instructions on reverse of this sheet)

(1) Did the decedent make any transfer described in the first paragraph (including the six subparagraphs) of the instructions on the reverse of this sheet? (Answer "Yes" or "No."): No.

(2) Did the decedent, within 2 years immediately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No."): No.

(3) Did the decedent, at any time, make a transfer of an amount of \$5,000 or more without an adequate and full consideration in money or money's worth, but not believed to be includible in the gross estate as indicated in the first paragraph (including the six subparagraphs) of the instructions of this schedule? (Answer "Yes" or "No."): Yes.

(4) If the answer to question (3) is "Yes" state date, amount or value, character of transfer, and motive which actuated the decedent in making the transfer: Community interest of \$90,403.20 in husband's Estate (Richard D. Girvin) conveyed to The Bank of California N.A. Trustee by Agreement dated 6/26/24 to be held by them for the same uses and purposes as those set forth in his will. Return filed for husband's estate 3/25/25. Tax paid on full amount of estate without exemption for community interest.*

(5) Were there in existence at the time of the decedent's death any trusts created by him during his lifetime? (Answer "Yes" or "No."): Yes (the trust referred to in paragraph 4 above.)

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
			\$	\$
	Copy of agreement dated 6/26/24 attached.			
Total (also enter under the Recapitulation, Schedule O)			\$	\$

Estate of Margaret E. Girvin.

Sheet X

* This transfer was motivated by the anxiety of Mrs. Girvin to avoid the care and trouble involved in the management of her half of the community property.

[Endorsed]: T.C.U.S. Filed Sept. 18, 1944.

[Title of Tax Court and Cause.]

MEMORANDUM OPINION

Opper, Judge: Respondent determined a deficiency in estate tax in the amount of \$14,344.29, all of which is in issue. The controversy arises because of respondent's inclusion in the gross estate, under section 811 (c). Internal Revenue Code, of the subject matter of a transfer in trust made by decedent during her lifetime.

The case was submitted upon a stipulation of facts, certain exhibits, and the brief oral testimony of one witness.

The stipulation shows that petitioner's decedent died January 16, 1941, a resident of California, at the age of 78. On June 26, 1924, she created a trust consisting of property which on the date of death had a fair market value of \$97,854.81. No part of this value was included in the estate tax return filed by petitioner. [77]

The trust in question was established shortly after the death of decedent's husband on April 5, 1924. His last will and testament was probated on June 25 of that year. His estate consisted in part of an undivided one-half interest in the community property of the marital community consisting of himself and decedent. The subject matter of the trust created by decedent was her half of that community property.

The husband's will created a trust of which the income was payable to decedent during her life "and after her death to divide the said Trust fund between

my said son Richard Girvin and my said daughter Lee Girvin Tevis in such shares and proportions that my said son shall receive and be paid one moiety or equal half part of the said Trust fund less Seven thousand five hundred dollars * * * and that my said daughter shall receive one moiety or equal half part of the said Trust fund and in addition the Seven thousand five hundred dollars * * *." Upon the death of either child his share was to go to his issue or if none to the survivor.

The trust created by decedent, after referring to the death of her husband and the creation of the trust under his will, appointed the same trustee and transferred to it "all the community property or interest of said party of the first part [decedent] in or to the estate of said Richard Donald Girvin, deceased, [the husband] which went to, belongs to, or may belong to her, as the surviving spouse of said deceased * * * as fully and effectually as though said community property or interest of said party of the first [sic], otherwise going to or belonging to her, was and could be devised and bequeathed unto said party of the second part [the trustee] in trust as aforesaid in and by said will, to which a reference is hereby made for further particulars." [78]

Decedent's will was dated November 7, 1932. After leaving her personal effects, the residue was placed in trust with the same trustee, the income to be paid to her two children for life with the remainders going to the issue of the respective life beneficiaries.

We find the facts to be as stipulated. We make

the further findings that on June 26, 1924, Richard Girvin, decedent's son, had three children, and Lee Girvin Tevis, her daughter, had two children; both children, all five grandchildren, and a great grandchild born subsequently were all alive at the date of the hearing herein.

Respondent's insistence that the transfer in question was made in contemplation of death creates an issue which ordinarily would be treated as predominantly one of fact. *United States v. Wells*, 283 U. S. 102. And the burden of producing the necessary factual proof would rest upon petitioner. *Purrin v. Commissioner* (C. C. A., 7th Cir.), 96 Fed. (2d) 929, certiorari denied, 305 U. S. 626. It is evident, however, from the form and manner of presentation that the parties did not regard themselves as at variance in respect to issues of fact nor anticipate that the disposition of the case would require the consideration of the details of factual background frequently resorted to in contemplation of death cases. Such evidence as there is, including the apparent motive of decedent in creating the trust, her age at the time, and the interval prior to her death have a tendency to suggest the absence of the motive characterizing taxable transfers.

The apparent basis for respondent's conclusion is one which might rather be ascribed to the legal effect of the trust instrument. It is decedent's reference to her husband's death and to her desire to have the trust property dealt with similarly to that which he disposed of by his will [79] upon which he relies. In this we think the attempt must be unsuc-

cessful. The provisions in question make it evident that the trust was created in contemplation of the husband's death and were testamentary in character only as related to his will. But that is far from saying that decedent was contemplating her own death or that she was making what amounted to a disposition in substitution for her own will. That document was prepared some eight years later and in fact did not dispose of her separate property in a manner identical to that established by the trust. The similarity of the latter to the provisions of the husband's will can, we think, have no bearing upon the testamentary character of decedent's own disposition. The single respect in which there might be said to lie some suggestion that decedent's dispositions dealt with contingencies connected with her death was the reservation to herself of the life estate and the provision for the devolution of the property thereafter. But this is a consideration to which we are not permitted to resort in settling such controversies. *May v. Heiner*, 281 U. S. 238.

Though less intensely urged, there is no additional issue as to the applicability of *Helvering v. Hallock*, 309 U. S. 106. On that score it should be sufficient to point out that the reversion to which the estate might be subject—by operation of law and not by force of any provision of the trust itself—could arise only upon decedent's survival of two children and five grandchildren, all of whom were living upon the establishment of the trust. These circumstances make it impossible to view this transfer as intended to take effect at or after decedent's death. *Estate of Benja-*

min L. Allen, 3 T. C. 844; Frances Biddle Trust. 3 T. C. 832; [80] Commissioner v. Kellogg (C. C. A., 3rd Cir.), 119 Fed. (2d) 54; Lloyd v. Commissioner (C. C. A., 3rd Cir.), 141 Fed. (2d) 758. We conclude that no part of the transferred property is includible in decedent's estate.

Decision will be entered for the petitioner.

Entered: Dec. 7, 1944. [81]

The Tax Court of the United States

Washington

Docket No. 2396

Estate of Margaret Eyre Girvin, Deceased, The
Bank of California, N. A., Executor,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered December 7, 1944, it is

Ordered and Decided: That there is no deficiency in estate tax.

[Seal] (s) CLARENCE V. OPPER,
Judge.

Entered December 7, 1944.

Copies served on both parties. [82]

In the United States Circuit Court of Appeals
for the Ninth Circuit

Docket No. 2396

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review.

v.

ESTATE OF MARGARET EYRE GIRVIN,
Deceased, THE BANK OF CALIFORNIA,
N. A., Executor,

Respondent on Review.

PETITION FOR REVIEW AND
ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now Comes the Commissioner of Internal Revenue, petitioner on review in the above-entitled proceeding, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John T. Rog-

ers, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

JURISDICTION

That the petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed qualified, and acting Commissioner of Internal Revenue, appointed and holding his office by virtue of the laws of the United States; that the respondent on review, the Bank of California, N. A., (hereinafter referred to as the executor), is a national association organized, created and existing under and by virtue of the laws of the United States with office at 400 California Street, San Francisco, California, and is the duly appointed, qualified and acting executor of the last will and testament of Margaret Eyre Girvin, [83] deceased (hereinafter referred to as the decedent), who died on January 16, 1941, a resident of San Francisco, California; that the estate tax return, made for and on behalf of the decedent's estate, was filed by the executor with the Collector of Internal Revenue for the First Collection District of California, which collection district is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit, wherein this review is sought.

The Commissioner seeks a review of the decision of the Tax Court of the United States pursuant to the provisions of Sections 1141 and 1142 of the United States Internal Revenue Code.

II.

NATURE OF CONTROVERSY

On June 23, 1943, the Commissioner, in accordance with the provisions of the existing internal revenue laws, advised the executor by registered mail that the determination of the estate tax liability of the decedent's estate disclosed a deficiency of \$14,344.29. Thereafter, on July 14, 1943, the executor filed an appeal from said notice of deficiency with the Tax Court of the United States for a redetermination of said deficiency. The Commissioner duly filed an answer to said petition. This cause came on for hearing before the Honorable Ernest H. Van Possan, Judge of the Tax Court, upon stipulation of facts of the parties, oral and documentary evidence.

The evidence disclosed that on June 26, 1924, the decedent created a trust consisting of property, which on the date of her death, had a fair market value of \$97,854.81. This trust was created shortly after [84] the death of decedent's husband, Richard Donald Girvin, (hereinafter referred to as the husband) who died April 5, 1924, and whose last will and testament was probated on June 25, 1924.

The husband's estate consisted in part of an undivided one-half interest in the community property of the marital community, consisting of himself and decedent. By his will a trust was created of which the income was payable to the decedent for her life, and after her death the property was divided between his son, Richard Girvin, and his daughter, Lee Girvin Tevis. Upon the death of either child in

the lifetime of the decedent leaving issue at her death, such issue should take the share which their parent would have taken, and if more than one, in equal shares. Said will also provided that should either child die in the lifetime of the decedent without issue, then upon the decedent's death the survivor should take the whole of said trust fund.

By the trust instrument of June 26, 1924, the decedent transferred to the trustee named therein, who was also the trustee in the trust created by the husband's will, all of her community property or interest in or to the estate of the husband which went to, belongs to, or may belong to her, as the surviving spouse of the husband, for the same uses and purposes as those declared and set forth in the husband's will and for the term therein stated.

On June 26, 1924, the decedent's son had three children, and her daughter had two children; both children, all five grandchildren and a great grandchild born subsequently, were all alive at the date of the hearing herein before the Tax Court. [85]

In its Memorandum Opinion entered December 7, 1944, the Tax Court held that the transfer in trust on June 26, 1924, was not a transfer of property intended to take effect at or after the decedent's death within the meaning of Section 811 (c) of the Internal Revenue Code. On the same day the Tax Court entered its decision ordering and deciding that there is no deficiency in estate tax.

III.

ASSIGNMENTS OF ERROR

That the Commissioner of Internal Revenue, being aggrieved by the opinion and decision of the Tax Court of the United States in this proceeding, hereby petitions for a review of the said opinion and decision by the United States Circuit Court of Appeals for the Ninth Circuit, and for the correction of the manifest errors which therein occurred and intervened to his prejudice. The errors committed by the Tax Court which are relied upon by the Commissioner as the basis of this petition for review are as follows:

The Tax Court of the United States erred:

1. In holding and deciding that the trust created by decedent on June 26, 1924, was not a transfer of property intended to take effect in possession or enjoyment at or after the decedent's death.

2. In failing to hold and decide that said transfer in trust on June 26, 1924, was a transfer testamentary in character and was not intended to take effect in possession or enjoyment until at or after decedent's death. [86]

3. In failing to hold and decide that the beneficiaries of said trust of June 26, 1924, had contingent remainders therein and would take their respective shares of trust property only upon the condition that they survived the decedent.

4. In failing to hold and decide that the decedent had a reversionary interest by operation of law in the property of said trust of June 26, 1924, which rever-

sionary interest remained until her death, and that the beneficiaries' interest therein remained contingent until decedent's death.

5. In that its decision is contrary to the law and to the regulations and is not supported by substantial evidence.

6. In ordering and deciding that there is no deficiency in estate tax.

7. In failing to order and decide that there is a deficiency in estate tax in the amount of \$14,344.29.

Wherefore, the Commissioner petitions that said opinion and decision of the Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of the said Court for filing, and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

(Sgd.) SAMUEL O. CLARK, Jr., CAR
Assistant Attorney General

(Sgd.) J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Of Counsel:

JOHN T. ROGERS,
Special Attorney, Bureau of Internal Revenue.

[Endorsed]: T. C. U. S. Filed Mar. 1, 1945. [87]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Allen G. Wright, Esq., Edward Hale Julien,
Esq., 1010 Mills Building, San Francisco, Cali-
fornia.

You are hereby notified that the Commissioner of Internal Revenue did, on the first day of March, 1945, file with the Clerk of The Tax Court of the United States at Washington, D. C., a petition for review, by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this first day of March, 1945.

(Signed) J. P. WENCHEL, CAR

Chief Counsel, Bureau of In-
ternal Revenue.

Attorney for Petitioner on
Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 5th day of March, 1945.

(Signed) ALLEN G. WRIGHT,

(Signed) EDWARD HALE JULIEN,

Attorneys for Respondent on
Review.

[Endorsed]: T.C.U.S. Filed Mar. 19, 1945. [88]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: S. V. Beckwith, Jr., The Bank of California,
N. A., Executor, Estate of Margaret Eyre
Girvin, Deceased, 400 California Street, San
Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the first day of March, 1945, file with the Clerk of The Tax Court of the United States at Washington, D. C., a petition for review, by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this first day of March, 1945.

(Signed) J. P. WENCHEL, CAR

Chief Counsel, Bureau of In-
ternal Revenue.

Attorney for Petitioner on
Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review

and assignments of error mentioned therein, is hereby acknowledged this 6th day of March, 1945.

S. V. BECKWITH, Jr.,

Assistant Trust Officer for Bank of California, N.

A., Executor, Estate of Margaret Eyre Girvin,
Deceased.

[Endorsed]: T.C.U.S. Filed Mar. 19, 1945. [89]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON

Now Comes the Commissioner of Internal Revenue, the Petitioner on Review in the above-entitled cause, by and through his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In holding and deciding that the trust created by decedent on June 26, 1924, was not a transfer of property intended to take effect in possession or enjoyment at or after the decedent's death.

2. In failing to hold and decide that said transfer in trust on June 26, 1924, was a transfer testamentary in character and was not intended to take effect in possession or enjoyment until at or after decedent's death.

3. In failing to hold and decide that the beneficiaries of said trust of June 26, 1924, had con-

tingent remainders therein and would take their respective shares of trust property only upon the condition that they survived the decedent.

4. In failing to hold and decide that the decedent had a reversionary interest by operation of law in the property of said trust of June 26, 1924, which reversionary interest remained until her death, and that the beneficiaries' interest therein remained contingent until decedent's death.

5. In that its decision is contrary to the law and to the regulations and is not supported by substantial evidence.

6. In ordering and deciding that there is no deficiency in estate tax.

7. In failing to order and decide that there is a deficiency in estate tax in the amount of 014,-344.29.

(Signed) SAMUEL O. CLARK, Jr., CAR
Assistant Attorney General.

(Signed) J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue.

Attorneys for Petitioner on
Review.

Service of a copy of the within Statement of Points to be relied on is hereby admitted this 22nd day of May, 1945.

ALLEN G. WRIGHT and
EDWARD HALE JULIEN,
Attorneys for Respondent on
Review.

[Endorsed]: T.C.U.S. Filed June 15, 1945. [91]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD,
PROCEEDINGS, AND EVIDENCE TO BE
CONTAINED IN RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Tax Court.

2. Pleadings before the Tax Court:

(a) Petition, together with attached Exhibit A (Notice and Statement of Deficiency).

(b) Answer.

3. Stipulation of Facts, together with exhibits referred to therein and attached thereto.

4. The following portions of the transcript of the proceedings before the Tax Court on September 18, 1944; beginning with Line 11, Page 6, and ending with Line 19, Page 7.

5. The following exhibits introduced in evidence at said hearing: Petitioner's (taxpayer's) Exhibit 1 and Respondent's (Commissioner's) Exhibit A.

6. Memorandum Opinion of the Tax Court entered December 7, 1944.

7. Decision of the Tax Court entered December 7, 1944.

8. Petition for Review, together with proof of service of notice of filing petition for review and service of a copy of petition for review.

9. Statement of Points to be relied upon.

10. Any and all orders made by the Court with respect to the enlargement of time for the preparation, transmission and filing of the record on review, not included in record.

11. This Designation of Portions of Record, Proceedings, and Evidence to be contained in Record on Review.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

(Signed) SAMUEL O. CLARK, Jr., CAR
Assistant Attorney General.

(Signed) J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue.
Attorneys for Petitioner on Review.

Service of a copy of the within Designation of Portions of Record, etc., is hereby admitted and agreed to this 22 day of May, 1945.

ALLEN G. WRIGHT and
EDWARD HALE JULIEN,
Attorneys for Respondent on Review.

[Endorsed]: T.C.U.S. Filed June 15, 1945. [93]

The Tax Court of the United States

Washington

Docket No. 2396

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

ESTATE OF MARGARET EYRE GIRVIN,
Dec'd., THE BANK OF CALIFORNIA, N.
A., Executor,

Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 93, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 26th day of June, 1945.

[Seal]

B. D. GAMBLE,

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 11088. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. The Bank of California, National Association, Executor of the Estate of Margaret Eyre Girvin, Deceased, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed July 2, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11088

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

ESTATE OF MARGARET EYRE GIRVIN, De-
ceased, THE BANK OF CALIFORNIA, N.
A., Executor,

Respondent.

DESIGNATION OF RECORD FOR PRINTING

Pursuant to Rule 19 (6) of the rules of this Court, the Commissioner-petitioner hereby designates for printing the entire transcript of record as filed and

transmitted to this Court by the Clerk of the Tax Court except taxpayer's Exhibit 1 and Commissioner's Exhibit A, being the exhibits mentioned in item 5 of the designation directed to the Clerk of the Tax Court. Those exhibits are not considered necessary for the hearing of the cause.

Dated July 23, 1945.

SAMUEL O. CLARK, Jr.,
Assistant Attorney General,
Attorney for Petitioner.

[Endorsed]: Filed July 28, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY RESPONDENT OF ADDITIONAL PART OF RECORD FOR PRINTING

Pursuant to Rule 19 (6) of the rules of this Court, the respondent in the above entitled appeal, having received on July 30, 1945, by mail a copy of the Designation of Record for Printing, submitted by the Petitioner in said appeal, does hereby designate for printing the following additional part of the transcript of record as filed and transmitted to this Court by the clerk of the Tax Court, to wit:

All of the Sheet X of the Taxpayer's Exhibit 1, (except the reverse side of said Sheet X), being Schedule G of the Taxpayer's Federal Estate Tax return.

The matter on the face of said Schedule G of said Taxpayer's Exhibit so designated as an additional part of the record for printing is considered material and necessary for the hearing of the cause.

Dated: July 30th, 1945.

ALLEN G. WRIGHT,
EDWARD HALE JULIEN,
Attorneys for Respondent.

[Endorsed]: Filed August 1, 1945. Paul P.
O'Brien, Clerk.

